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Delta Stewardship Council
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Subject: Delta Plan Third Draft Comments

Dear Chairman Isenberg and Mr. Grindstaff:

Glenn-Colusa Irrigation District (GCID) appreciates your consideration of the following comments as the Council and staff continues to develop the Delta Plan (Plan) and attempt to meet the schedule mandated by the California Legislature. As the Council continues through its process now with the third draft, we recognize that there continues to be improvement in how the Council intends to implement the Plan, especially as it pertains to agencies and regions situated in the Delta watershed. While we tend to focus from our own perspectives and regions, there is general consensus that the Delta is in need of restoration and the question is how the Council should approach that task with the completion of the Plan. Further, this Council will need to approve the Plan and then ensure it can be implemented by its successors, which is critical to the Plan's long term success.

In terms of a philosophical approach to the Plan, the question should be asked as to how to develop an approach in which the Plan, in fact, leads to change. One alternative, which appears to be the current underlying theme of the Plan, is to create enough inherent risk through the Plan that entities are forced to implement actions to avoid being regulated. Alternatively, and perhaps as more of a business and collaborative approach, the Plan should focus on stability and ensuring that regions remain sustainable and water supplies, regional ecosystems, and investments are respected. With that foundation instead of a threat of risk, regions can then undertake new actions and investments that will keep them sustainable and contribute to improving the Delta.

GCID, while having a different mission than the Council, is fully aware of the complexities inherent in managing coequal objectives and goals as we have effectively managed our water supply to meet the complimentary and, at times, competing uses of water for crops, wildlife, groundwater management, and supply downstream water users in a manner that protects our local and regional values.

With that context in mind, we provide you with the following comments:

1. The 2012 Delta Plan (Page 8)

The title of this section is misleading and it is unclear as to what this section is trying to accomplish. At first read, it appears that this section summarizes what the critical components of the first Plan will be for the initial 2012-2017 period. This section could also be read to state that the major components of the initial Plan are actually actions of others that may be included in the Plan, and those actions by others could result in the Plan succeeding in meeting the defined objectives. If the latter is the case, it would seem that a more applicable title to this section would be "Critical Actions by Others," which would allow the reader to understand that the Plan is relying upon other non-Plan actions to meet the goals and objectives of the Legislation.

2. Current Conditions (Page 9)

This section fails to point out that not only were the mentioned projects built for water supply benefits but most, if not all, included a significant component and benefit for flood control protection. The public demanded that these State, Federal, and even local projects not only have water supply benefits, but significant flood control benefits that have also contributed, for example, to the loss of wetlands and the construction of smaller levees in the Delta. Absent these projects and flood protection, the Delta would have flooded and continue to flood on a regular basis. These projects indirectly allowed for further reclamation of lands within the Delta.

Page 10, Line 26.

The Plan states that, "... California's water managers do not know how much water is being used on an annual basis." This statement is overly broad and doesn't justify some of the other conclusions reached in the Plan. For example, what managers does the Plan refer to, local water managers, the states water managers, or policy makers? The statement also seems in conflict with the Council's December 8, 2010, Water Resources White Paper which goes into great detail as to how much and where water is used in the State for differing purposes. The White Paper provides a good water budget for the State and regions and, in fact, does show how much water is used on an annual basis. Perhaps a more appropriate statement is that it is difficult to know, on a real-time basis, how much water is being used during a given year.

3. Phasing of the Delta Plan and First Five Years (page 13)

This section lacks detailed information on what the Plan intends to accomplish in the near term especially given the statement on line 18 that, "the **initial five years** after adoption of the Delta Plan will be critical to its success." This section should focus on those key actions that will lead to the Plan succeeding. There should be clear

performance measures and objectives included in this section that will allow the reader to determine how the balance of the Plan document will define the process to meet these measures and objectives. Also, for agencies that may be subject to covered actions, it will be important to know what the objectives and priorities will be for the next five years. To cite the expression, "if you have nothing to shoot at, you will miss every time."

4. Figure 2-1. Adaptive Management Framework

The Adaptive Management Framework for the Delta Plan is good in principle; however, the balance of the document fails to link Goals and Objectives to Proposed Actions, which is critical to ensure that actions are tied to expected results and outcomes. The Plan contains various levels of policies and recommendations, but there is no discussion on how those actions would ultimately meet the coequal goals of water supply reliability and ecosystem restoration. If the actions and recommendations in Chapter 4 for water supply and Chapter 5 for the ecosystem are implemented, the Plan should identify a response and outcome. Counter to this would be that these actions occur in a vacuum and the Plan "hopes" the system will respond for the better. Clearly, more linkage is required that will identify "how" between actions and responses. This Adaptive Management Framework should provide more of this direct linkage. Box 1, on page 26, should provide examples where this is being practiced in California.

5. Covered Actions.

While the Plan makes attempts to define what a covered action is and is not, it is still questionable as to what is considered a Covered Action. Figure 3.1 provides a Decision Tree for determining actions, which initially seems to make sense and is helpful; however, later in the Plan there are regulations and recommendations for actions outside the boundaries of the Delta. Figure 3.1 Decision Tree shows that if an action is outside the boundaries of the Delta it is NOT a covered action. Two boxes below states that if it's covered by provisions of the Delta Plan it IS a covered action. Obviously, it cannot be both, clarity is sorely needed. At the Council's April 28-29 meetings, there seemed to be some clarification of covered actions; however, additional examples would be helpful, particularly for those agencies like GCID that are situated outside the Delta but still within the Delta watershed.

Page 35 identifies an appeals process for consistency findings that could take as long as 150 days (5 months) for the Council to make a final determination, which is simply too long and result in delays to projects. As explained on Page 36-37, most actions by agencies will be considered a "Project" under Public Resources Code 21065. This will require that agency to complete CEQA compliance, which has its own noticing, commenting, and objection period. If the project is at all controversial, it will likely

result in litigation. After completing CEQA and resolution of litigation, if any, it makes no sense to then allow the Council to review the matter for up to five months before issuing a decision. The Council should consider an abbreviated schedule for those projects that have had a previous CEQA and/or NEPA review and approval process.

6. Chapter 4 – A More Reliable Water Supply for California

Page 45, Line 24. The Plan now includes an action to “control water demand.” The Plan should elaborate on what actions the Council foresees that water agencies should implement to control water demand and cite what authority both M&I and ag agencies should rely upon to enforce demand controls.

Page 47, line 13. Policies.

The application of these policies to a region is understandable, but how the Council defines a region, how expansive or small, is critical to meeting the policies within the Plan. Additionally, this will be a significant issue as it relates to a party requesting the Council to make an inconsistency finding based on a region not complying with the Plan. Defining a region improperly could have the unintended consequences of penalizing agencies that are in compliance with the Plan, even though a part or the entire greater region may not be. If a water agency or small part of a region has not or has yet to comply with the WR policies, does that mean the entire region is out of compliance? The interpretation is too broad and should be narrowed.

WR P1.

These recommendations are in addition to the requirements of SBX7-7, Water Conservation. DWR, together with stakeholders and formed Committees, is still in the process of developing the requirements to comply with the conservation legislation. The actions in WR P1 are not legislated and clearly expand the SBX7-7 plan requirements. The Council should be coordinating with DWR to ensure the recommendations in this section are consistent with SBX7-7 and the DSC should participate in the workgroups that DWR has convened to implement the Water Conservation Planning effort. Failure to do so will result in local agencies having to complete multiple plans.

Page 48, Option A.

Not all regions have a completed an IWRMP. In our region, the Northern Sacramento Valley Integrated Water Management group is still formulating a governance and working structure and has not begun to develop an actual plan. In fact, it is uncertain if there will be a plan developed, and if it will be developed by the 2015 date in the Delta Plan. Again, the issue is that if there is no IWRMP in place, are the agencies in a region that may be covered by that IWRMP deemed inconsistent with the Plan, and then have

potentially covered actions challenged, although a local agency may be in compliance with all requirements of the Delta Plan?

Page 48, WR P2.

Many water agencies will not be able to comply with the SBX7-7 timelines (10608), based on regulations that DWR is in the process of developing or may develop. As an example, agricultural water suppliers are required to complete some actions such as measurement and volumetric pricing by July 31, 2012. However, DWR has not completed final regulations nor has the Water Commission approved any new regulations. Given that regulations may not be final for another six months, it will be impossible to comply with the dates in the legislation, even though water agencies are willing to implement these new regulations. The Plan cannot take the position that agricultural water supplies are deemed to be inconsistent with the Delta Plan when agencies are attempting to comply with the SBX7-7 regulations and implementation timelines. The Plan needs to recognize and encourage agencies that have identified a schedule and timeline to implement the new regulations in their plans that would be deemed consistent with the Delta Plan.

Conservation In General

Another important distinction in this section, as well as elsewhere in the Plan, is the role of conservation in the context of water supply reliability and availability. In some regions, conservation, here defined as a reduction in direct consumption, can free up supplies that can be used for additional demands or needs. In the urban export area, holding exports constant and having one region implement conservation may make additional water supply available for future growth or for transfer to other neighboring regions. However, in our region upstream of the Delta, conservation will not result in any new additional water being available for other uses or users. The fact is that downstream users already make use of water that may not be consumptively used within our region as that water enters water pathways through surface or subsurface flows to those downstream users. During the April 28-29 Council meeting, staff made the statement that if upstream water users implemented conservation that conserved water could then be transferred.

Unfortunately, that statement is incorrect. In our region, conserved water is not transferrable. The only water that can be transferred is water made available through land fallowing or groundwater pumping. Land fallowing directly reduces consumption, groundwater pumping could only occur if pumping is shown not to injure other water users or the environment. The Department of Water Resources and Bureau of Reclamation have developed "White Papers"

<http://www.water.ca.gov/watertransfers/docs/TechInfoDoc-WaterTransfers-2011.pdf>

that provide great detail and requirements on how to make water available for transfer. Conservation is not an allowed alternative.

Delta Instream Flow Criteria and Setting of Flows

It is interesting that the Council chose to place the SWRCB Flow Criteria report in the water supply reliability section. As the Council and staff may be aware, the SWRCB completed its draft report

http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/draft_report072010.pdf , which included Exhibit B detailing some of the initial modeling done to examine the potential effects of implementing the flow criteria. GCID and the Northern California Water Association provided comments on the draft report, http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/comments072910/david_guy.pdf, and http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/comments072910/thaddeus_bettner.pdf, in which our modelers determined that if the Board were to implement the criteria, there would be approximately six million acre-feet of additional outflow required. This would cripple water supply reliability and availability both upstream of the Delta and in the export region.

Further, it is difficult to surmise what the Council is actually trying to implement in this section. Is it to increase flows to the Delta or additional outflow that would be implemented by 2014, or would it be to set targets or objectives that would be used for further development of the Plan? The SWRCB placed the below limitations in Section 1.1 of the report:

Limitations of State Water Board Approach

When setting flow objectives with regulatory effect, the State Water Board reviews and considers all the effects of the flow objectives through a broad inquiry into all public trust and public interest concerns. For example, the State Water Board would consider other public trust resources potentially affected by Delta outflow requirements and impose measures for the protection of those resources, such as requiring sufficient water for cold water pools in reservoirs to maintain temperatures in Delta tributaries. The State Water Board would also consider a broad range of public interest matters, including economics, power production, human health and welfare requirements, and the effects of flow measures on non-aquatic resources (such as habitat for terrestrial species). The limited process adopted for this proceeding does not include this comprehensive review.

As clearly and correctly stated within the report, the SWRCB identified the flow criteria as a limited process and the Board must complete a full and comprehensive review of all public trust resources if it is going to change flows within the Delta.

Problem Statement and Policies (Page 50, lines 9-29)

This problem statement overly simplifies the process that the Board must complete in order to change flows within the Delta. As stated above, the Board must perform a balancing of public trust resources, which can only be done through a public hearing and proceeding process that allows all legal users of water to participate in a process similar to the last Delta water quality control plan proceedings for D-1641. The problem statement could be to direct the Board to conduct new water rights proceedings for the Delta to update D-1641, based on current conditions in the Delta and improving conditions in the Delta as a direct result of the BDCP and implementing the Delta Plan.

The policies in this section should be directly tied to policies and recommendations in Chapter 5. In reality, the solution to the Delta ecosystem will be coequal based solutions of water supply reliability that could make additional water available for the ecosystem and habitat improvements in the Delta that will directly benefit the species. Simply implementing the policies in the Plan and from the Flow Report will result in a direct reallocation of water supply from current users to the environment that will erode Water Supply Reliability. For the Plan not to identify this outcome is irresponsible and akin to the CalFed failure of "get better together" and not being honest in the public debate of potential impacts. Certainly, the environmental impact report for the Plan should identify these negative impacts.

Statewide Storage and Conveyance

The Council should seriously consider whether to even include this Section in the Plan: the language in this section does nothing but reiterate the status quo and echoes the current dialogue regarding storage and conveyance. It is an apathetic approach. This section seems to imply that whatever happens in other venues, such as the Water Commission, will happen and there is no benefit or consequence if new storage and conveyance is constructed or not. The hope would be that, in fact, the Council and staff view storage and conveyance as critical tools to improving water supply reliability. If this is the case, the Plan should advocate for new facilities and identify how new facilities would meet the coequal goals. If the BDCP is successful, it could improve habitat and flows in the Delta that would meet the coequal goals. New storage could increase flows and/or improve timing of flows to the ecosystem and provide additional water supplies to water users.

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The problem statement could be that new storage and conveyance are critical tools to meeting the coequal goals and the State, Federal government, and locals need to expedite studies and implement projects consistent with the coequal goals and Plan. The policies could reiterate the language in SB7X-2 which provides the "ground rules" the legislature put on projects, those particularly seeking public cost shares.

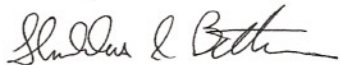
The recommendation defers to the California Water Commission, which is appropriate for those projects that need to go the Commission for approval or funding. However, many projects will be locally implemented and do not need approval from the Commission. The Council should exercise leadership and advocate storage and conveyance projects in order to meet the coequal goals.

7. Chapter 5 – Restore the Delta Ecosystem

This Chapter fails to link how the ecosystem will recover through yet to be defined actions by others, provided those actions are consistent with the Plan. Unfortunately, hope will not get the job done. In reality, the Plan should introduce, propose, and plan measures and actions in accordance with Water Code Section 85302 that details specifics of a healthy Delta ecosystem. In the Performance Measures section, the Plan refers to progress toward achieving these goals, yet the Plan includes no specific actions to attain these goals or the outline of a framework for restoring the ecosystem. Again, the Council and Plan should assert some leadership in beginning to craft what the Plan for the Delta ecosystem should be based upon, the best available science and the Council's own Independent Science Board. There may be obvious limitations to implementing the actions identified, but other parties may or would be willing to pursue those actions. Certainly, the Independent Science Board should be providing some input and guidance to the plan that would begin to lay the framework of a functioning ecosystem.

GCID appreciates your willingness to consider the above comments. If you have any questions, please contact me at your convenience at 530-588-3450.

Sincerely,



Thaddeus L. Bettner
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